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Current Topics.

Cost of Litigation: Solicitors' Remuneration.

THE recent slight and belated increase in the remuneration permitted to solicitors has created an interest which the increases in the pay of other workers has not produced. A "legal correspondent" in the *New Statesman and Nation* of 1st July put the matter fairly, when he said: "When salaries and expenses have increased all round, it is not surprising that The Law Society should have recently obtained an increase in solicitors' fees." He pointed out that their fees were fixed long before the last war, and one increase of 33⅓ per cent. had already been permitted. The writer did not say, as in complete fairness it would have been right to say, when that increase was imposed, namely, in 1919 and 1925. He proceeded, however, to admit that solicitors had suffered considerably during the war, both through increased expense and added difficulties in their work. But, he continued, there is another point of view which must be considered just as in the case of the sale of commodities—"Can the public afford to pay?" He then proceeded to examine the evil consequences of the high cost of litigation, paid a tribute to solicitors, who had been "most generous in giving their services for little or nothing where they have recognised the need," and suggested that a scheme of legal aid for every person in the country could be devised if the Government would give more than the "negligible financial assistance" which it had given in the past. The article well summed up the situation in the words: "More needs doing than it is reasonable to ask a profession to do for nothing." No one can find fault with that sentiment, but if one may be permitted a formal rather than a substantial grumble at the article, it is at the suggestion apparently implicit in the manner in which it commences, that solicitors' remuneration and the recent increases are the governing cause of "the prohibitive cost of litigation." It is a sufficient answer to say that solicitors' fees are not the only costs of litigation. It should also be pointed out that the authority which fixed the maximum charges which solicitors may receive, had to pay close regard to the minimum on which solicitors subsist and, as all who know the profession appreciate, that is a low level in comparison with other professions. The problem must obviously be attacked, as the writer in the *New Statesman* admits, from another angle, and if everybody in the modern democratic State is to be entitled to legal guidance and representation, and if these inevitably expensive services are out of the reach of the average citizen, the State owes the citizen the duty of putting them within his reach.

Local Authorities and Town and Country Planning Bill.

MEMBERS of Parliament recently received a statement on the new Town and Country Planning Bill made on behalf of bodies representative of local government authorities throughout the country, including the County Councils Association, the Association of Municipal Corporations, the Urban District Councils Association, the Non-County Borough Councils Association, the Rural District Councils Association, the London County Council, and the Corporation of the City of London. The statement expresses the keen and profound disappointment of local authorities with many proposals in the Bill and their earnest hope that the Government will afford facilities for discussion with them before proceeding with it. The statement denies the necessity for varying procedures for the compulsory acquisition of land according to the different purposes for which it is to be acquired, and says that there should be one form of procedure for all the statutory purposes of a local authority, which should be simple and quick in action. The machinery suggested in cl. 2 (2) for special cases in areas of extensive war damage should be sufficient for all acquisitions. A further criticism is made that no power is given to local authorities to acquire land compulsorily for open spaces as such. As local authorities lack general powers to acquire land for hospitals and other public buildings and services by means of compulsory orders, powers should be conferred for all their statutory purposes. The power to apply for a declaratory order as regards an area of extensive war damage is limited to a period of five years from the commencement of the intended Act (cl. 1). The statement criticises this period as being too short. The price for land compulsorily acquired should be its current market value, or its value on 31st March, 1939, whichever is the lower, with provision for special cases which are outlined in the statement. The principle of the 1939 ceiling should apply to compensation payable by local authorities in respect of restrictions on development imposed in the interests of planning. This is consistent with the application of the 1939 ceiling to compensation for acquisition. The system of grants is criticised on the score of inadequacy, and it is also observed that there is to be no grant in respect of reconstruction schemes other than those related to areas of extensive war damage, no grant towards capital expenditure, and no provision to assist local authorities to meet expenses of general replanning or any claims which they may have to meet as a result of the imposition of planning control.

Control of Use of Land.

TWO articles in *The Times* of 4th and 5th July contain an admirable analysis of the Government's recently published proposals for the control of the use of land. The first article deals with the reasons for the rejection of the Uthwatt proposals. These, it states, are instructive. The first is that the Uthwatt proposals involve an undesirable differentiation between developed and undeveloped land and a different method for the control of each. The Planning Bill itself, however, the article states, proposes different treatment for three distinct categories of urban land—for the blitzed town, the "blighted" town, and the normal town; the range of method is from total public acquisition to no public acquisition at all. Again, the White Paper, while it treats all land uniformly as regards the prohibition of development except by licence and as regards the collection of betterment, differentiates between undeveloped rural land (green) and other undeveloped and developed land in the procedure of compensation. The Bill, too, in its provisions for "overspill" areas, makes two classes of rural land. It is not surprising that these diversities should appear. They are grounded, as the Uthwatt Committee saw, in the necessities of the case. With regard to the second reason, namely that the demarcation of "town areas" is a formidable, controversial and unsatisfactory undertaking, the article points out that the task of demarcation is to be performed according to the Bill and the White Paper in more painstaking detail than was proposed in any of the Committee's recommendations. The article also examines the White Paper's proposal that all land should be subject to a betterment charge wherever permission is granted to develop or redevelop for a different use, and points out that an almost identical scheme was passed over by the Uthwatt Committee on various grounds in favour of a levy, which hit more people and did not hit so heavily as the charge. The article states that the levy discovers a source of public revenue wherever an increased annual site value is enjoyed, whereas the charge, since it comes into play only when development or redevelopment is in question, will leave betterment that does not involve a change of user untouched. Both charge and levy, it is stated, are rough-and-ready methods of collection, based on the conviction that it is impracticable to trace betterment in any strict sense. The second article criticises the Government's proposal to leave open the basis of assessment for five years on the ground that it creates the maximum of uncertainty, whereas it should be the constant aim of planning to create certainty. The article also attacks the White Paper on the basis of an alleged implication of a double authority controlling the use of land, and

it is stated that the local authority will not be certain of the central planning authority's approval of its whole programme, irrespective of the amounts of compensation and betterment involved. The article concludes by saying that judgment is hindered by the obscurities in the Government statement, and everything that intelligence and goodwill can do must be directed to finding ways of making the proposals sound. If the effort fails, says the writer, we should be prepared to go back to the advice tendered in the Barlow, Scott and Uthwatt Reports.

Police as Advocates.

A SOLICITOR defending a criminal proceeding at the Liverpool police court on 26th June objected to the prosecution's case being conducted by a police sergeant, and stated that his firm had written to the chief constable that they were not prepared to agree to a police officer prosecuting in any case in which they appeared for the defendant, unless that police officer was the complainant. In reply to the stipendiary magistrate's inquiry as to the grounds of his objection, the solicitor said that the police officer prosecuted by courtesy of the magistrate and the defending solicitor. The magistrate replied that throughout the thirty-four years he had been stipendiary in that court it had been the custom for a police officer to prosecute in cases other than those in which, for some particular reason, a solicitor or counsel were instructed. As far as he could see personally, that system appeared to have worked exceedingly well. He should not feel inclined to interfere with it unless there were some very good reason. He did not regard it as a matter of courtesy but as an established practice. It is a curious and interesting fact that many police officers and some benches do not know what the law is on this all important matter. Police officers, in the eyes of the law, are, at any rate in theory, treated in exactly the same way as any other class of citizen, and ss. 12 and 14 of the Summary Jurisdiction Act, 1848, makes it clear that every prosecutor or complainant has the right, on an information, to conduct his information or complaint. The disapproval of high authorities on the bench of the practice of police officers conducting prosecutions has in the past been unequivocal and unanimous. LORD DENMAN thought it a "most unfortunate practice" (*Webb* v. *Catchlove*, 50 J.P. 795). HAWKINS, J., and no judge showed greater ability in criminal cases, said that it was a bad practice to allow a police officer to act as an advocate before any tribunal, "so that he would have to bring forward only such evidence as he might think fit, and keep back any that he might consider likely to tell in favour of any person placed upon his trial" (*ibid.*, see also *per* LORD COLERIDGE, L.C.J., in *Duncan* v. *Toms*, 51 J.P. 631). This is far from being a mere technicality, and in fact it goes to the root of the democratic constitution under which we live. Advocates who discover irregularities in this respect owe a duty to the public to voice their protest and render it effective by proper objections.

The Metropolitan Police Report.

SOME interesting figures concerning crime in the metropolis during 1943 are contained in the recently published report of the Commissioner of Police, Sir PHILIP GAME. One of the most remarkable facts disclosed by the report, considering the conditions prevailing during that year, is that there was a higher percentage of crimes "cleared up" than in any of the preceding ten years. The Criminal Record Office recorded 92,230 convictions for the whole of the year, compared with 100,114 in 1942. Since May, 1943, from which date motor cars no longer needed to be immobilised when unattended in the London area, the number of thefts of and from cars had doubled. There were 9,528 arrests for drunkenness, as compared with 9,067 for the previous year. This figure was less than half that for 1938. Ten bottle parties were closed down during the year under a Defence Regulation, which, the report states, has proved even more useful in enabling a check to be kept on undesirable cafés, unregistered clubs and "near beer" establishments. Since the regulation was introduced in 1940 thirty-one undesirable premises had been closed down. By the end of last year the number of registered clubs in the Metropolitan area had fallen from 2,850 to 2,163 and in the West End the drop had been from 429 to 250. Persons with doubtful antecedents had been deterred from attempting to register clubs as a result of the Defence Regulation introduced in 1942 enabling the police to object to registration. The total of fines and costs imposed for club irregularities during the four years ending in December, 1943, was £39,000. The report, having regard to existing conditions, is a credit to the metropolitan police force, but as the Commissioner points out, the longer the war goes on, the greater will be the strain on police man-power, and the police therefore need all the help they can get from the public.

A New Planning Order.

AN important new order relating to the control by local authorities of development during the period between the date of the planning resolution and the date when the planning scheme comes into effect, was published in draft on 4th July. The last order relating to interim development control was in 1933, but the war, the changed outlook on planning and the wider power of control over interim development given by the Town and Country Planning (Interim Development) Act, 1943, have necessitated the publication of a new order. This order will operate for the duration of the war only, and when it is over a fresh order will be made to accord with the changed conditions. Under the new order, five categories of development are ordinarily to be permitted: (1) Development carried out by a body exercising statutory powers on land specifically designated by Parliament (e.g., the construction of a new waterworks). This class is limited to development authorised by statute before the date of the new order. In the case of future statutes, the Minister proposes to secure any necessary planning control during the passage of the enactment. (2) Development by a local authority or by a statutory undertaker which has been sanctioned by a Government department before the coming into effect of the order. (3) The restoration of war-damaged property, except in cases where it involves an increase in size or a material alteration of the exterior of buildings. (4) Alterations to, and the maintenance of, existing buildings, provided the alterations do not affect the exterior and are not connected with a change of use. (5) Certain specified categories of development carried out by statutory undertakers, mining undertakers and certain other authorities. These are set out in detail in the schedule to the draft order, and include a variety of constructional and other works by railway companies and by undertakers responsible for docks, harbours, canals, electricity, gas and water supplies, mining, land drainage, sewerage and lighthouses. In special circumstances as, for instance, where there are proposals for the redevelopment of an area, control may be exercised even in the case of development falling within one of the above "permitted" categories. The draft order introduces special machinery for dealing with development by a local authority or statutory undertaker where sanction by a Government department is required.

Service Men and Correspondence Courses.

SINCE activity on the battle fronts became more pronounced, the interest of Service men in the free vocational training provided for those who wished to spend their spare time profitably has necessarily waned, but much tuition by correspondence still continues. The June issue of *The Law Society's Gazette* reminds its readers that The Law Society undertook at the request of the War Office to conduct through the Society's School of Law the courses in legal subjects, and the Society of Public Teachers of Law and the Council of Legal Education have fully co-operated in the scheme. The entries for the legal subjects, it was stated, had proved even larger than was expected when the scheme was launched, and further entries were being received from the War Office every week. The subjects offered are (*a*) Contract; (*b*) Negotiable Instruments; (*c*) Bankruptcy; (*d*) Tort; (*e*) The English Legal System; (*f*) Sale of Goods; (*g*) Company Law; (*h*) Criminal Law; (*i*) Conveyancing; (*j*) Real Property; (*k*) Constitutional Law; and (*l*) Equity. The *Gazette* states that when a Service man registers under the scheme the Tutorial Secretary on the Society's staff forwards him the name of the tutor who will supervise the man's work, and papers for him to answer. As and when written answers are received from the student, they are forwarded to the tutor for correction, and the tutor returns them in due course to the student with notes upon the work. Both barristers and solicitors have volunteered their services as tutors under the scheme and the expressions of appreciation received from Service men, many of whom are overseas, testifies to the value of the work which the tutors are doing. Further assistance is now required, and offers by solicitors who would be willing to act as tutors are asked for by the Secretary, who would also like to know the particular subject in which the new tutors are willing to assist. The work is not heavy and can be limited to the time which the tutor feels he is able to give. All out-of-pocket expenses of tutors are refunded by the War Office. Those who have done this work can testify to the satisfaction which the tutor obtains from appreciating the extraordinarily high standard of work attained by Army students. It is a good augury for the future that in the stress and turmoil of warfare there are not a few Service men and women who are devoting all their spare time to fitting themselves for their peace-time services, and no lawyer will grudge his help to this excellent work.

Recent Decision.

In *Vickery* v. *Martin*, on 5th July (*The Times*, 6th July), the Court of Appeal (The MASTER OF THE ROLLS, MACKINNON and LUXMOORE, L.JJ.) held that where premises were let as a dwelling-house and subsequently were used by the tenant for the purpose of taking in lodgers, the tenant continuing to reside in the premises, there was nothing to exclude the premises from the operation of the Rent Restriction Acts, 1920 to 1939. The learned county court judge had held that the premises were excluded from the operation of the Acts because they were substantially a lodging-house and used for the purpose of a trade or business, but the Master of the Rolls pointed out that the word "substantial" was not to be read before "part of the premises" in s. 3 (3) of the 1939 Act.

A Conveyancer's Diary.

Death Duties and the Statutory Trusts.

A CORRESPONDENT has raised an interesting point in connection with my recent articles about the statutory trusts. It may be recalled that I observed more than once, with varying degrees of emphasis, that in my view it is bad conveyancing at the present day to purport to convey or devise land to tenants in common, leaving it to the Act to impose the statutory trusts. The proper course appears to me to be that the grant or devise shall be to trustees for sale as joint tenants, the undivided shares being limited out of the proceeds of sale. The correspondent refers to an article in a contemporary, the *Law Times* of 29th April, 1944, where it is suggested that it is substantially more advantageous from the point of view of death duties to use forms of words which attract the statutory trusts rather than to create an express trust for sale. As my correspondent says, the point is important.

The argument is founded upon subss. (4) and (5) of s. 16 of the Law of Property Act. The earlier subsections are directed to making the personal representative accountable for all death duties leviable on the death of the deceased. Subsection (4) is as follows: "Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him." Subsection (5) is to the effect that, notwithstanding that the section makes any duties payable by the personal representatives, nothing in Pt. I of the Act shall affect their ultimate incidence as between the persons beneficially entitled. It was decided in *Attorney-General* v. *Public Trustee* [1929] 2 K.B. 77 that, upon the death of a person who had been a tenant in common of land at the beginning of 1926, the estate duty upon the notional proceeds of sale, arising under the statutory trusts imposed by the transitional provisions, was to be treated as estate duty on realty, by virtue of these subsections. It followed that the duty was payable in eight half-yearly instalments with interest at 4 per cent. from the date of the first instalment, that is, a year from the testator's death. The unsuccessful claim of the Crown was that the duty was payable as on personalty, that is, in one instalment upon delivery of the Inland Revenue affidavit and with 4 per cent. interest from the testator's death.

The argument proceeds as follows: the effect of s. 16 (4) and that case is that one should normally allow the statutory trusts to apply. Where they apply duty can be paid in instalments, and no interest is payable for the first year. Where there is an express trust for sale, duty on a share of proceeds of sale is undoubtedly payable as on personalty, i.e., on delivery of the Inland Revenue affidavit with interest from the death. Further, under s. 15 of the Finance Act, 1914, estate duty on realty is reduced upon the second of two deaths within five years, but not upon personalty. And finally it is argued that where a share in land passes the share is valued as a share, which is a less valuable piece of property than a like proportion of the value of the whole; it is said that in practice the Revenue allow a rebate of 10 per cent.

Now, I must say at once that in view of these arguments there may be a certain number of cases where, exceptionally, it is worth while allowing the statutory trusts to apply. But I still take the view that normally it is bad conveyancing to do so. At the present date it is not reasonable to doubt the decision in *Attorney-General* v. *Public Trustee* as it has stood unchallenged for fifteen years. But I feel found to point out that, strictly speaking, it is only a decision as to the position of land affected by the transitional provisions, and it does not cover cases where the statutory trusts are imposed by L.P.A., s. 34 (or s. 36), or S.L.A., s. 36. Moreover, the judgment of Rowlatt, J., is less than three lines long and is expressed merely to follow two other decisions, *Re Mellish* and *Re Wheeler*. The latter of those cases was one in which Tomlin, J., said that he was bound by the former of them. And the former is not reported at all, save so far as can be gleaned from the report of the latter. *Attorney-General* v. *Public Trustee* is thus not a very strong or wide authority.

Be that as it may, it is stated in the opening chapter of "Dymond" (9th ed., pp. 6, 7) that there is an exception to the rule that duty is payable on proceeds of sale of land as on personalty, and that the exception covers cases governed by L.P.A., ss. 34 and 36, as well as those within the transitional provisions. I agree, therefore, that it is a working hypothesis that duty on a share of proceeds of sale of land is payable as on realty where the trust for sale is statutory and on personalty where it is express. It follows that no interest is payable for a year if the trust for sale is statutory. This is an undoubted advantage, but whether the saving of interest on the amount of duty outweighs the disadvantage of being involved with the statutory trusts is a question of degree. In really large cases it probably does so; in a small case the expense of disentangling the consequences of the statutory trusts will usually be a deterrent. It also follows that duty is payable in instalments in a case where the trust for sale is statutory. Again, in a large case, there may well be advantages in raising the money gradually. But of course no money is saved in the long run by doing so, as the unpaid instalments carry interest. Moreover, even in a large case, I imagine that if the estate or settlement contains capital moneys in easily realisable securities, it will usually be much less trouble to pay the duty once for all and wind matters up. I concede, however, that in a large case there may be an advantage in the statutory trusts here, especially if the estate or settlement contains only realty. On the other hand, one has in each case to weigh this advantage against the disadvantages which flow from the statutory trusts; my experience is that the statutory trusts usually give rise to considerable inconvenience and expense.

As regards the other advantages claimed for the statutory trusts, I feel some difficulty. With very great respect, I do not think that those claims are correct. Section 15 of the Finance Act, 1914, dealing with "quick successions," refers to "any interest in land." According to the eighth edition of "Dymond," the expression covers realty subject to a trust for sale; and in the ninth edition there is cited (p. 197) a Scottish decision, *Glen* v. *C.I.R.* [1926] S.C. 44, from which this proposition would seem to follow. Again as regards valuation, "Dymond" (9th ed., p. 207) states that "where a share only of property passes, it should be valued independently and not on the footing that the proeprty will be sold as a whole; so that where an undivided moiety of property passes on a death a reasonable allowance may be made from half the value of the whole in order to arrive at the value of such moiety." I cannot see why this reasoning should be confined to shares of notional proceeds of sale arising under the statutory trust or sale. It ought surely to apply to any share of proceeds of sale, because in all cases it is the share as a share which passes on the death and is to be valued. Years may pass before the entirety is put up for sale.

To sum up, I think that perhaps the statement which I made in my former articles were unduly absolute. It is probably not bad conveyancing in quite all cases to use a form of words which attracts the statutory trusts. There may well be certain large and exceptional cases in which a little interest will be saved, and some degree of inconvenience as to the time for raising the duty will be avoided by using the statutory trusts. Those are matters which have to be weighed against the substantial inconvenience which the statutory trusts tend to cause, and in my view the scale will not often tip in favour of the statutory trusts. Moreover, it has to be remembered that the question only arises at all if one grants that L.P.A., s. 16 (4) applies to land affected by the statutory trusts otherwise than by virtue of the transitional provisions. In short, while there are no doubt exceptions to this, as to every other, rule, it is desirable to give beneficial interests to tenants in common behind an express trust for sale, and it is undesirable to give such interests in a way which will attract the statutory trusts.

Landlord and Tenant Notebook.

Self-contained Lease.

"COMPLETELY self-contained" was the expression used by Scott, L.J., to describe the lease (of a flat) before the court in *White* v. *Richmond Court, Ltd.* (1944), 60 T.L.R. 391 (C.A.), holding that a document under seal executed, one gathers on the same day as the lease but later in that day, and purporting to reduce the rent reserved by the lease, did not have the effect of making the lower figure the "rent at which the dwelling-house was . . . first let" for the purposes of the Increase of Rent, etc., (Restrictions) Act, 1920. I say "one gathers" because the statement of facts records that on the same day that the lease was *granted* the solicitors for the landlords wrote to the applicant (who sought determination of the standard rent) enclosing a deed *executed* by the landlords in which it was stated that in consideration of the flat being taken in its then undecorated condition the rent would be reduced by, etc., during the tenancy of the lease. From the judgment above mentioned, rather than from the statement of facts, it is clear that "lease" is used in the strict sense of an instrument under seal (though the tenancy was for one year and thereafter from year to year); such an instrument takes effect from the time of its delivery, which completes its execution; so "granted" is not a very satisfactory way of giving us a picture of what actually occurred. But I think it is safe to assume that both instruments were executed on the same day and that the one which speaks of rent being reduced was delivered second.

The day in question was one in March, 1941, and the rent named in the lease was £200, the reduction provided for in the other document £50 a year; assuming the reduced amount had been accepted, would this affect either the question of the standard rent—which was the question before the court—or that of liability for past and future differences between the amounts?

The tenant relied largely on dicta uttered by Lord Greene, M.R., in the recent case of *Bryanston Property Co., Ltd.* v. *Edwards* (1943), 87 SOL. J. 439 (discussed in this "Notebook," *ib.*, p. 436). Except for the fact that both involved determination of the

standard rent, the two had little in common; for what had to be construed in the older case was a *single* document providing for *temporary* (war-time) reduction, and the proceeding was an action for rent at the higher rate; and what the court decided was that the provision for reduction was a term or condition of the original contract of tenancy and thus incorporated in the ensuing statutory tenancy. But the learned Master of the Rolls did remark: "Moreover, in applying an Act like the Rent Restriction Act to a document of this kind, I do not think that too much attention should be paid to technical argument. The Act contemplates the substance of the obligations of the tenant, and here the tenant is to pay £190, the reduced amount, and no more."

No doubt the first of those two sentences and the first half of the second one gave the plaintiff in *White* v. *Richmond Court, Ltd.*, some encouragement, but when one considers the second half of the second sentence and the relevant facts and differences alluded to above, one sees that the encouragement should be qualified. And it was, presumably, for the reasons indicated that the court held that in this case there was no room for liberal interpretation.

For when dealing with inconsistencies, real or apparent, in a single document, as was the case in *Bryanston Property Co., Ltd.* v. *Edwards*, regard may be had to such considerations as repugnance, ambiguity, either patent or latent. And the issue there concerned the rights of the parties to the action only. In *White* v. *Richmond Court, Ltd.*, the status of a dwelling-house was directly in issue, the order being *in rem* (see *Pearman* v. *Dyer* [1935] 2 K.B. 149 (C.A.)), and as this was determined by "the rent at which the dwelling-house was *first* let after the said 1st September, 1939," and the lease was again, to use Scott, L.J.'s apt expression, "self-contained," what happened later could not affect the point.

Indeed, the landlords in the new case appear to have evolved a method of investing a dwelling-house with a standard rent higher than its immediate letting value which may be considered a variant of a method mentioned from time to time in this "Notebook," namely, that of letting in consideration of so much for the first week and so much less for subsequent weeks. Part of the judgment delivered by Lord Greene, M.R., in *Bryanston Property Co.* v. *Edwards* as good as sanctioned this device, as was pointed out in the "Notebook" on 11th December last (87 SOL. J. 437).

Any suggestion that either of these methods amounts to an attempt to contract out of or evade the Acts can be further answered by (*a*) pointing out that even the 1939 Act did not contemplate such extraordinary fluctuations in letting value as have been occasioned by the vagaries of air raids, and (*b*) referring to the more recent decision in *Maclay* v. *Dixon* (1944), 1 All E.R. 22 (C.A.) (discussed in the "Notebook" for 26th February: 88 SOL. J. 74). In that case the tenant of furnished premises sought to impugn the *bona fides* of the transaction on the ground that "evasion" had been planned; but Scott, L.J., referring to older authorities, said that the citizen's only duty was to obey laws and that parties were entitled to arrange matters so as to prevent Acts from applying. The existence, if not exact position, of a line was, however, shown by *Conqueror Property Trust, Ltd.* v. *Barnes Corporation* (1943), 60 T.L.R. 75 (see 87 SOL. J. 453: "Sham Leases").

If my reading of the course of events and their interpretation in *White* v. *Richmond Court, Ltd.*, be correct, there could be no question of the tenant in that case being called upon to pay rent at the higher rate while the contractual tenancy continued. For what happened was that he held the premises for a short time, it may be only a few minutes, at the higher figure; then a deed varied the reddendum. The only criticism I would make is this: the use of a deed anticipated any questions about consideration such as were raised in *Crowley* v. *Vilty* (1852), 7 Exch. 319, and other cases (see 87 SOL. J. 428); this being so, it seems a pity that the instrument used mentioned consideration and that the consideration was described as the (actual) taking of the flat in an undecorated condition. A fuller account of the facts might explain why this was done; we do not know whether there was a counterpart to the lease or, if so, when it was executed, and it seems likely that the tenant would not wish to execute one before delivery of the second document. And, perhaps, one day we shall have a decision on the question whether letting by a lease delivered in escrow can constitute "first letting" for the purpose of s. 12 (1) (*a*) of the Increase of Rent, etc. (Restrictions) Act, 1920.

Books Received.

Tax Cases. Vol. XXV. Parts I and II. 1944. London: H.M.S.O. 1s. each net

The Law and Employers' Liability. A Report by The Hon. QUINTIN HOGG, M.P., in conjunction with Six Conservative members of the House of Commons. 1944. pp. 23. London: Stevens & Sons, Ltd. 2s. net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1943–44 Volume, Parts 3, 4 and 5. London: Hamish Hamilton (Law Books), Ltd.

To-day and Yesterday.

LEGAL CALENDAR.

July 10.—Michael Van Berghen and his wife Catherine kept a public-house in East Smithfield: they were natives of Holland and so was their servant Geraldius Dromelius. One evening, about 8 o'clock, a country gentleman came to their house to drink and stayed till 11. By the time he left he was tipsy and he had not gone far when he missed his purse. Returning, he accused his hosts of having stolen it; a quarrel and a scuffle ensued in the course of which Van Berghen fractured his skull with a poker and Dromelius stabbed him repeatedly. They stripped the body and carried it to a ditch communicating with the Thames while the woman washed the blood from the floor. A chain of circumstantial evidence brought the crime home to them and the testimony of their maid clinched the case against them. On the 10th July, 1700, they were executed near the Hartshorn Brewery as close as possible to the scene of the crime. The bodies of the men were afterwards hanged in chains between Mile End and Bow.

July 11.—In the struggle for the independence of the United States the genius of Alexander Hamilton, with its brilliance, its versatility, its youthful buoyancy, shone with a special lustre, illuminating all his enterprises, whether as soldier, statesman, author or advocate. At twenty he became secretary to Washington, the commander-in-chief of the American armies, holding the rank of Lieutenant-Colonel and won distinction not only by the extraordinary ability with which he handled the high affairs of State entrusted to him but also by his personal gallantry in the field. After the war, at the age of twenty-five, he went to the Bar and attained immediate success in practice in New York. "He was no mere advocate to dazzle twelve men in a box. With courts he was more successful than with juries; and the higher the court, the greater was his influence upon it . . . Although still a boy in years and spirits . . . he had already contended and measured himself against characters who have left their mark on history. It is characteristic of his quality that during the year in which he studied for the Bar he wrote a text-book on law for the use of students. With a succeeding generation of students Hamilton's text-book remained in use, not from any sentimental reason, for the party which he had led was extinguished and his own fame lay under a cloud of unpopularity, but solely on its merits. He practised at the Bar for seven years before Washington summoned him to his Cabinet, and ten years after he resigned office . . . During the whole of this period he was occupied as much with public affairs as with his profession. Yet . . there exists no doubt that he must be numbered among the great lawyers . . . With him . . . law was . . . not so much a painful effort of learning as the intuition of an eternal harmony; a reality, quick and human, buxom and jolly, and not a formula pinched and embalmed, stiff, banded and dusty." His constant opponent in public life was Aaron Burr, as truly the dangerous type of politician as he himself was the model of the statesman. Burr likewise was a leader of the Bar. Their struggle culminated in a challenge from Burr; Hamilton accepted, but required a delay of some weeks to conclude the cases in which he was engaged and settle his personal affairs. On the 11th July, 1804, they met under the heights of Weehawken on a grassy platform overlooking the Hudson River. Hamilton fell mortally wounded at the first fire and died next day. He was forty-seven years old.

July 12.—In 1759 England and France were fighting the Seven Years War. On the 12th July "came on before the lords of appeal the cause of a Spanish ship called the *San Juan Baptista*, Joseph Arteaga master, taken in her passage from Corunna to Nantes, when, after a long hearing and many learned arguments, their lordships were pleased to decree the restitution of both ship and cargo, but from an irregularity in the pass no costs were given the claimants."

July 13.—On the 13th July, 1798, Henry and John Sheares, sons of a Cork banker, and both members of the Irish Bar, were found guilty of high treason in Dublin. Theirs was one of the most notable of the trials of the leaders of the rising of that year. The jury were only seventeen minutes considering their verdict, and when it was delivered the brothers clasped each other in their arms. Before sentence Henry, the elder, asked for time to settle his affairs and provide for his wife and children; he was then overwhelmed with tears. John, who was far the stronger and more energetic character, made a noble speech expressing his readiness to suffer, but asking that his brother might have a respite. Both were executed next day without being allowed to see their friends or relatives.

July 14.—On the 14th July, 1731, "the sessions began at the Old Bailey when Edward Stafford, Esq., was tried for the murder of Thomas Maynwaring, a porter, and was brought in lunatic, appearing so on his trial by several witnesses." He had sent the porter, who plied near Gray's Inn Gate, on an errand but, on his demanding more than he thought fit to give him, he had run him through with his sword.

July 15.—On the 15th July, 1819, Mary Brayshear was found guilty of bigamy at Maidstone and condemned to seven years' transportation, the sentence being afterwards commuted to five

years' imprisonment. She was a very pretty woman and in excellent health when she entered Millbank Penitentiary in June, 1820, but three years later she was taken ill and died, her body being reduced to a mere skeleton. In July, 1823, an inquest was held by the Deputy Coroner of Westminster, the thirty-fourth at that prison since the beginning of the year. The jury showed some curiosity as to the diet of the convicts and in particular the meat allowance which was said to consist of "odds and stickings of beef." The steward was sent for a sample but reported that none remained over from the previous day. A verdict of "natural death" was recorded. This prison, then just completed, was regarded as something of an up-to-date show-place, but the constant complaints of bad and inadequate food suggested serious flaws in its administration. The Tate Gallery now occupies its site.

July 16.—On the New River Company asking how Lincoln's Inn wished to be supplied with water in case of fire, the benchers ordered on the 16th July, 1752, that the company be acquainted "that the Society propose to be supplied with water from the pipes in Chancery Lane and Lincoln's Inn Fields . . . with proper keys to turn the water from the company's main pipes into the said pipes . . . when occasion of fire shall make it necessary and from thence into such reservoir . . . as this Society may think proper to make . . ."

PORTLAND-DRUCE.

Mention of that vast astonishing palace, Welbeck Abbey, where there has recently been a sale of surplus furniture, never fails to recall to the lawyer that almost unbelievable sequence of litigation which for years ran wild in all the courts of the metropolis from the lowest to the highest, chasing a solution of the fantastic problem: Was the fifth Duke of Portland also Mr. Thomas Druce of the Baker Street Bazaar? It began in 1896, when Mrs. Annie Maria Druce, widow of one of the shop-keeper's sons petitioned the Home Secretary for the opening of her father-in-law's coffin in order that she might prove that it was empty, that his death and funeral thirty-two years before were a sham and that his personality masked the double life of the fabulously wealthy nobleman (deceased in 1879) whose eccentricities, especially the great underground chambers he had tunnelled at Welbeck, had been the talk of England. The Druce family opposed the application by every device known to the law. The enormous publicity of the case brought into the field George Hollamby Druce, who had been a miner in Australia, and was so descended from Thomas Druce as to have a better title than Annie Maria to the fortune she was ultimately claiming. Between hallucination and perjury the case kept going till 1908, in the House of Lords, the Court of Appeal, every Division of the High Court, the Consistory Court, the City of London Court, Marylebone Police Court, the Central Criminal Court and finally the Court of Crown Cases Reserved, where a point of law arising out of the trial for perjury of one of George Hollamby's witnesses was the last case argued before it ceased to be. The whole affair has a Dickensian ring, particularly old Mrs. Druce telling the President of the Probate Division: "I want my income £1,000 a day—one thousand sovereigns. I am very hard up, you know, and I want my money—*my* money you know . . . I am now Mrs. Druce of Baker Street, but I shall prove that I am the Duchess of Portland later on." Of course, when the coffin was opened at last the body was inside.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS JOURNAL.]

Legal Reform.

Sir,—The letter of the Secretary of The Law Society in your issue of the 1st July emphasises the point I wished to make in my letter in your issue of the 17th June.

The Acts relating to solicitors are purely in the interest of the profession and were passed in order that public criticism of our profession, due to the misdoings of an extremely small minority, should be allayed. Most solicitors consider them at least a generation overdue.

The legislation, in which the Society took part, is entirely war legislation. I should have thought that the evidence given before departmental committees such as those on Rent Control and Company Law was fulfilling a duty for which the Society exists. The matters dealt with in (*d*) of Mr. Lund's letter are, as regards (i) (ii) and to some extent (iii), in the interests of the profession.

Whilst it would be most ungracious not to recognise the work of the members of the Council of the Society and its Secretary, I am bound to repeat that The Law Society has not addressed itself to the question of ascertaining what part the profession can play in reconstruction.

Leicester. BERTRAM PLUMMER
6th July.

The Rt. Hon. Sir Howard Kingsley Wood, M.P., Chancellor of the Exchequer, left £63,981, with net personalty £50,066.

Our County Court Letter.

The Quality of Seed.

IN *Bell* v. *Bateson* at Cambridge County Court the claim was for £60, the price of seed sold and delivered, and the counter-claim was for £82 18s. as damages for breach of warranty. The plaintiffs were seedsmen and their case was that in January, 1942, they had supplied the defendant with a quantity of seed oats ordered from a sample. The seeds were examined before delivery and were found to be in accordance with the sample. The remainder of the same lot of seeds had been sold elsewhere and no complaint had been received. The defendant, however, had complained that in a 20-acre field of oats 30 per cent. of the crop produced was barley. The latter seed should have been distinguishable in the driller when sown. The defendant was a farmer and his case was that the seed had been sown as received from the plaintiffs by a contractor. He himself first saw the crop when it was flowering. There was no barley on his farm and the barley crop produced must have come from the plaintiffs' seed. His Honour Deputy Judge Grafton Pryor held that the seeds corresponded with the description and there had been no breach of warranty. Judgment was therefore given for the plaintiffs on the claim and counter-claim, with costs.

Sale of Shop Premises.

IN *Harper* v. *Cartwright* at Dudley County Court the claim was for the rescission of a contract for the sale and purchase of a shop and premises, No. 1, Clarence Street, Upper Gornal. The plaintiff was the administratrix of the estate of her late father and the defendant was her brother. The plaintiff's case was that her deceased father had agreed to sell to the defendant the above premises at the price of £200. The contract was alleged to have been obtained by reason of the undue influence of the defendant over his father, who was aged and illiterate. The deceased vendor's signature to the contract was not witnessed. The defendant was a works accountant and his case was that no undue influence had been exercised at the time of the signing of the contract, and his late father was in full possession of his faculties. His Honour Judge Caporn suggested that the matter might be compromised, and it was ultimately agreed that the defendant should pay £50, in addition to the agreed sum of £200, and should retain the property, the costs being paid out of the estate.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Will—Assent in favour of a Purchaser given an Option to Purchase at a Fixed Price by the Will.

Q. Testator made a will in November, 1943, and died in April of this year. By will he appointed his daughter and son executors and gave to them in that order the option of purchase of his dwelling-house at the price of £750. The option will probably be exercised by one or other of them. The residue is given to the daughter and son in equal shares. It has been suggested that the transaction be effected by a simple assent in the form (No. 8) given in Sched. V to the Law of Property Act. Is there any objection to this method, or must the transaction be carried out by a conveyance reciting the option and the deed stamped £7 10s. *ad valorem*?

A. We do not approve the suggestion. The purchaser would not be entitled by way of "devise, bequest, devolution, appropriation, or otherwise" (*ejusdem generis*). It might well be, therefore, that the assent would be ineffective in fact. Further, *ad valorem* stamp duty would properly be attracted. Yet again, it is to be remembered that an assent is only sufficient (and not conclusive) evidence for the future in favour of a purchaser. See Administration of Estates Act, 1925, s. 36 (1) and (7); see also *In re Duce and Boots Cash Chemists (Southern), Ltd.* [1937] Ch. 642; 81 SOL. J. 651.

Land Registration Act.

Q. Can land voluntarily registered in a non-compulsory county be afterwards taken off the register and again become unregistered land? A title I am investigating shows the land to have been voluntarily registered in a non-compulsory county and the land was afterwards conveyed by A by a conveyance off the register, the record in the Land Registry being brought up to date, the said A being recorded therein as proprietor and the register closed in his name. Subsequent conveyances are by ordinary conveyancing deeds not registered. Is this correct?

A. Yes. Section 81 of the Land Registration Act, 1925, authorises the removal on the application of the registered proprietor with the consent of the persons (if any) who are shown on the register to have interest. The land certificate and certificates of charges (if any) are delivered up and the register is closed as far as that property is concerned.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Montreal Coke and Manufacturing Co. *v.* **Minister of National Revenue.**

Montreal Light, Heat and Power Consolidated *v.* **Same.**

Viscount Simon, L.C., Lord Russell of Killowen, Lord Macmillan, Lord Wright, and Lord Porter. 3rd May, 1944.

Canada—Revenue—Income tax—Company redeems bonds in order to reduce income charges—Fresh bonds issued—Whether expenses of conversion deductible—Income War Tax Act, R.S.C., 1927 (*c.* 97), *s.* 6 (*a*) (*b*).

Appeals from judgments of the Supreme Court of Canada.

These two appeals were consolidated. They turned on the constructions of the Income War Tax Act, 1927, s. 6, which in Pt. II of the Act, headed " Exemptions and deductions," provides: " In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of (*a*) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income; (*b*) any outlay, loss or replacement of capital or any payment on account of capital or any depreciation, depletion or obsolescence, except as otherwise provided in this Act." C company, the first appellant, had, on the 1st January, 1935, a series of 5½ per cent. bonds outstanding, maturing in 1947, but redeemable before maturity at a premium. Principal and interest were payable at the bond-holders' option in United States dollars. The L company, the second appellants, had, on the 1st January, 1936, a series of 5 per cent. bonds outstanding, maturing in 1951. Principal and interest was payable in gold. Market conditions being favourable, both companies redeemed these bonds and re-borrowed at lower interest rates and on less onerous conditions. This conversion scheme necessitated considerable financial outlay in the payment of premiums, commission and printing expenses. The first company proposed to amortise these expenses by spreading them over twelve years, and the other company by spreading them over twenty years. The companies claimed to deduct the amortisation instalments from their respective taxable income for the year in which instalments were payable. The Minister disallowed these deductions. Both companies appealed. The Minister's decision was affirmed in the court of first instance and by the Supreme Court of Canada.

Lord Macmillan, delivering the judgment of the board, said that it was conceded that the expenses incurred by the appellants in originally borrowing the money represented by the bonds subsequently redeemed were properly chargeable to capital and were not incurred in earning income. If the bonds had subsisted to maturity, the premiums and expenses then payable on redemption would plainly also have been on capital account. Why then should the outlays in connection with these transactions, described as refunding operations, not fall within the same category? Their lordships were unable to discern any tenable distinction. In the Courts of Canada the deductions claimed were held to be struck out both by para. (*a*) of s. 6, as not being expenditure for the purpose of earning the income, and by para. (*b*), as being payments on account of capital. It might well be that the items of expenditure were open to both objections. The first objection which their lordships upheld, was sufficient to dispose of the case, but they in no way dissented from the view that the second objection also applied. The appeal should accordingly be disallowed.

Counsel: *J. M. Tucker*, K.C., and *Frank Gahan*; *Cyril King*, K.C., and *Heyworth Talbot*.

Solicitors: *Lawrence Jones & Co.*; *Charles Russell & Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

HOUSE OF LORDS.

Chichester Diocesan Fund and Board of Finance *v.* **Simpson.**

Viscount Simon, L.C., Lord Macmillan, Lord Wright, Lord Porter and Lord Simonds. 21st June, 1944.

Will—Construction—Bequest to " charitable or benevolent object or objects "—Uncertainty—Validity.

Appeal from a decision of the Court of Appeal.

The testator, who died in 1936, after appointing executors and making certain pecuniary bequests, by cl. 6 gave the residue of his estate to his executors upon trust for sale and conversion, and he directed them to apply the net residue of the proceeds of sale " for such charitable institution or institutions or other charitable or benevolent object or objects as my acting executors may in their absolute discretion select, and to be paid to or for such institutions and objects if more than one in such proportions as my executor or executors may think proper." The testator's executors proceeded to administer his estate and they distributed the net residue, which amounted to somewhat over £250,000, between some 139 charitable institutions. Subsequently, the testator's next of kin raised the question whether the gift of residue was invalid on the ground that it was not charitable. The executors thereupon issued writs against the charities calling upon them to repay the various sums which they had been paid. As a preliminary step the executors took out this summons asking whether the trust declared by cl. 6 of the will was a valid charitable trust or whether it was void for uncertainty. The defendants to the summons were certain of the testator's next of kin, two of the charities and the Attorney-General. Farwell, J., held that there was no binding authority which compelled him to hold that in every case the words " charitable or benevolent " must be construed so as to render a gift of this kind invalid. The testator having shown an overriding intention to benefit charity in the legal sense, the gift of residue operated as a good charitable gift. The Court of Appeal reversed the decision of Farwell, J., and held the gift failed.

Viscount Simon, L.C., said that he could not doubt but that a gift expressed in the terms of this will, in the absence of a context to vary its *prima facie* meaning, was void for uncertainty. The fundamental principle was that a testator must by the terms of his will dispose of the property with which the will proposed to deal. With one exception, he could not by his will direct executors or trustees to do the business for him. That exception arose when the testator was minded to make gift for charitable purposes and when he directed his executors or trustees within such limitations as he chose to lay down to make the selection of charities to be benefited. That exception was allowed because of the exceptional favour English law showed to charities. The conception of what was charitable for such purposes had been elaborately worked out so that the courts were able to determine whether a particular gift was charitable. But when, as here, the expression was " charitable or benevolent," it was impossible to attribute to the word benevolent an equal precision or to regard the courts as able to decide with accuracy the ambit of the expression. It was not disputed that the words " charitable " and " benevolent " did not mean the same thing. It inevitably followed that the phrase " charitable or benevolent " occurring in a will must in its ordinary context be regarded as too vague to give the certainty necessary before such a provision could be supported or enforced. Then was there any special context in this will which would justify a different interpretation? It did not seem to him that there was any context which might give to the impeached phrase a special meaning. They had no right to set at nought an established principle, such as this, in the construction of wills, and the appeal should be dismissed.

Lord Macmillan, Lord Porter and Lord Simonds agreed that the appeal should be dismissed.

Lord Wright expressed the opinion that the appeal should be allowed.

Counsel: *Romer*, K.C., and *C. L. Fawell*; *C. E. Harman*, K.C., and *Humphrey King* (for *W. S. Wigglesworth*, on war service); the *Attorney-General* (Sir Donald Somervell, K.C.) and *H. O. Danckwerts*.

Solicitors: *Thomas Eggar & Son*; *Treasury Solicitor*; *White & Leonard and Nicholls & Co.*; *Preston, Lane-Claypon & O'Kelly*; *Field, Roscoe and Co.*, for *Stapley & Hurst*, Eastbourne.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

COURT OF APPEAL.

In re **Rogers; Lloyds Bank, Ltd.** *v.* **Lory and Others.**

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 21st April, 1944.

Will—Construction—Bequest to grandson " on attaining twenty-one years " —Income payable to infant's mother for his maintenance—Infant dies under twenty-one—Whether infant's interest vested.

Appeal from a decision of Vaisey, J.

The testator gave all his real and personal estate to the plaintiff bank, whom he appointed executor, upon common form trusts for sale and conversion and " upon trust to hold the sum of £2,000 (free of duty) . . . and to pay the income thereof to my wife during her life and after her death as to both capital and interest in trust for my grandson I . . . on his attaining the age of twenty-one years: Provided that should my wife die before the said I shall attain the age of twenty-one years then I direct the bank to pay the income of such fund to his mother S for the advancement and education of the said I." He gave the residue of his estate to his wife absolutely, with a gift over in the event of her predeceasing him. The testator's wife died in August, 1941, and he died in the following November. The grandson died in 1943, aged ten. This summons raised the question whether the gift to the grandson was vested and passed to the next of kin. Vaisey, J., held that the bequest was contingent and fell into residue. The personal representatives of the infant legatee appealed.

Lord Greene, M.R., said that there was no dispute that the opening words of the gift imported contingency, but it was well settled that the meaning and effect of such words might be altered by accompanying provisions. If the direction properly construed was that the infant was to have the beneficial interest in the whole of the income before he attained the age of twenty-one, the gift must be treated as vested. It was contended that this was not the true construction, because the words of the will must be construed not as a gift to the infant's mother as trustee for him, but as a gift to her beneficially, subject to a charge for his advancement and education. A long-standing judicial construction has been adopted with regard to gifts of this kind and its correctness had not been challenged. Lord Cranworth, V.-C., in *Browne* v. *Paull*, 1 Sim (N.S.) 92, at p. 103, stated it thus: " that where the interest of the children's legacies is given to a parent, to be applied for or towards their maintenance and education, then, in the absence of anything indicating a contrary intention, the parent takes the interest subject to no account, provided only that he discharges the duty imposed on him of maintaining and educating the children." The question was therefore one of construction. He had come to the conclusion that the mother was not a trustee for the infant and the words of the gift were not sufficient to make the contingent gift a vested one. The appeal would be dismissed.

MacKinnon and Luxmoore, L.JJ., agreed.

Counsel: *Neville Gray*, K.C., and *George Maddocks*; *R. F. Roxburgh*, K.C., and *Harold Lightman*.

Solicitors: *Bower, Cotton & Bower*, for *George Davies*, Manchester; *Gard, Lyell & Co.*, for *Theodore Bell, Cotton & Curtis*, Cheam.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Hardwicke *v.* **Gilroy.**

Scott, Luxmoore and du Parcq, L.JJ. 24th April, 1944.

County court practice—Counter-claim for damages for slander—No application to transfer to High Court or leave in county court—Defence to counter-claim filed by plaintiff—Jurisdiction of county court to try counter-claim—County Courts Act, 1934 (*24 & 25 Geo. 5, c. 53*), *ss.* 40 (1) *and* 63.

Defendant's appeal from an order made by the learned county court judge at Watford County Court, striking out a counter-claim for £10 damages for slander of the defendant in the way of her trade and business.

The action was for damages for negligence in turning and repairing a suit of clothes, and His Honour adjourned the hearing of the action pending the determination of this appeal. The learned judge held that although, by reason of the intimate connection between the facts concerned in the claim and those concerned in the counter-claim, it would have been convenient to try the counter-claim and the claim at the same time, nevertheless, by reason of the County Courts Act, 1934, he had no jurisdiction to try the counter-claim, which he accordingly struck out. The plaintiff made the application under s. 63 (1) of the County Courts Act, 1934, to have the counter-claim transferred to the High Court or that the whole be left to be dealt with in the county court. The ground for such application as stated in s. 63 (1) is that the counter-claim "involves matter beyond the jurisdiction of a county court." Under s. 63 (3), in default of such application, or if it is ordered on such an application, that the whole matter be left to be dealt with in the county court, the county court has jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary. The learned county court judge held that s. 40 (1) of the County Courts Act, 1934, excluded from a county court judge's jurisdiction any claim for damages for slander, whether by original plaint or counter-claim unless the parties consented.

SCOTT, L.J., reading the judgment of the court, said that in the opinion of the court s. 63 (3) conferred on the county court jurisdiction over a counter-claim for slander in unambiguous language. It was clear that a cause of action not normally triable in the county court, such as slander, was a "matter" properly described as being "beyond the jurisdiction of a county court," within s. 63 (1). The construction of the section to the effect that only a counter-claim for a sum of money exceeding the jurisdiction of the court could be so described was erroneous. There was a clear indication in s. 203 of the Supreme Court of Judicature (Consolidation) Act, 1925, that the phrase "matter beyond the jurisdiction of the court" was used by the Legislature in 1925 with reference to counter-claims which were outside the jurisdiction of the court, because of their subject-matter, and not merely those in which the sum claimed was in excess of that which a plaintiff could recover. In the County Courts (Amendment) Act, 1934, the distinction was removed, and the expression "matter beyond the jurisdiction of the county court" was used (in s. 11) as it was in the present Act, with reference to both subject-matter and amount.

Appeal allowed.

COUNSEL: *Robert Fortune; James Comyn.*

SOLICITORS: *E. C. Kilsby & Son; A. Leslie Smith.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION.

Jenkins *v.* Inland Revenue Commissioners.

Macnaghten, J. 9th May, 1944.

Revenue—Sur-tax—Settlement irrevocable—Settlement for future benefit of settlor's children, who were infants at time of settlement—Statutory provision that income of settlement to be treated as income of settlor unless settlement irrevocable—Arrangement in settlement for investment of settled funds in company approved by settlor—Investment of settled funds in company controlled by settlor—Control of settlor so powerful that on liquidation of company settled funds would be extinguished—Contention of Crown that effect of such control made settlement revocable—Another statutory provision only applicable to one of years of assessment, whereby if settlor has interest in any income arising from settlement, such income to the extent not distributed to be treated as income of settlor—Dividends constituting income of settlement paid to settlor in repayment of loan—Whether settlor had interest in undistributed income within meaning of statute—Finance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 34), s. 21 (1) (2) (3) (8)—Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 38 (3) (4).

Case stated by the Special Commissioners.

This was an appeal by J against two additional assessments to sur-tax, namely, for the year 1936–37 and the year 1937–38, respectively. J in 1934, by a settlement which was expressed to be irrevocable, settled £1,000 upon trust for his three infant children when they attained twenty-five years of age and in the meantime there was power to apply the income for their maintenance and benefit. It was provided that the trustees could only invest the money in any security which was approved by J. They invested the money with J's approval in a company formed by J. Of the 5,000 "A" £1 shares J held 4,999 and his wife held one. The trustees held the 21,000 "B" £1 shares, J having lent the trustees £19,500. It was provided that J should have complete control over the company, and it was provided that upon liquidation J and his wife should receive double the amount paid up on the "A" shares in priority to the "B" shares to merely the actual amount paid up on which the trustees were entitled, but which in the circumstances it was impossible for them to receive, for J and his wife would be entitled to £10,000, and J would also be entitled to the £19,500 lent by him to the trustees, and these two amounts being equal to £29,500, the whole of the company's capital of £26,000 would be more than absorbed. The result was that on a liquidation the trust fund of £1,500 would be extinguished. That fund's inferior position was made worse by a further transaction whereby the company subscribed for £26,000 "B" shares in another company, and J subscribed for the 12,000 "A" shares in it, with a similar arrangement that he would get double the amount paid up, i.e., £24,000, upon a liquidation, whereas the company would only get what was left, namely, £14,000. The Crown contended that the result of these transactions was that the settlement was not irrevocable within the meaning of s. 21 (3) of the Finance Act, for by winding up both companies, as he had power to do, J would really be revoking the settlement, for he would have wiped out the settled fund. Therefore, by subs. (1) the income of the composite settlement comprised by the original settlement and the formation of the two companies must be deemed to be J's income. The provisions of the Finance Act, 1938, applied to the second year of assessment. The Crown claimed that by reason of the fact that the trustees had paid to J in part payment of their loan the dividends which they had received from the first company, J therefore had an interest in the undistributed income of the composite settlement within the meaning of subs. (3) of s. 38 of the Finance Act, 1938, and, therefore, by reason of the provisions thereof, the income of that settlement must be deemed to be his.

MACNAGHTEN, J., said that the settlement was not revocable in spite of the fact that the settled fund might become extinct in the case of a liquidation; therefore, the Crown failed in its contention made with reference to s. 21 of the 1936 Act, but in view of the fact that the trustees had handed over to J in part payment of the loan the amount of the dividends they had received from the first company, J must be deemed to have had an interest in the undistributed income within the meaning of s. 38 (3), and therefore that income must be deemed to be his. The appeal, therefore, of J in respect of the assessment for the year 1936–37 would be allowed, and in respect of the assessment for the year 1937–38 would be dismissed.

COUNSEL: *Heyworth Talbot; J. H. Stamp* and *R. P. Hills.*

SOLICITORS: *E. & J. Mote; Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Danziger *v.* Thompson and Others.

Lawrence, J. 12th May, 1944.

Evidence—Agreement to let a flat—Daughter named as tenant—Admissibility of evidence to show that daughter was agent for the father or mother, the real tenants—Whether such evidence contradicted the written contract.

Action for rent against three defendants who were father, mother and daughter.

The daughter was named as tenant in a written agreement to let a flat. By her pleading she admitted her liability for rent. On a preliminary objection for the other defendants that evidence was not admissible to show that the daughter entered into the agreement as agent or nominee for her father or mother, because it would contradict the description of the daughter in the agreement as tenant, his lordship admitted the evidence subject to the objection, in order that all questions might be decided. His lordship found as facts that it was agreed that the father should take the flat in the name of the daughter, that the daughter was represented to the landlords' agents as of age, and that the reason for the agreement being in her name was on account of possible improper demands of the landlords of the flat in which the defendants then resided.

LAWRENCE, J., said that it had been contended on behalf of the defendants that proof that the daughter entered into the agreement on behalf of her father or mother contradicted the description of her in the agreement as tenant (*Humble* v. *Hunter*, 12 Q.B. 310; *Formby Bros.* v. *Formby*, 102 L.T. 116; *Fred Drughorn, Ltd.* v. *Rederiaktie-bolaget Transatlantic* [1919] A.C. 203). In his lordship's opinion the description "tenant" did not imply that the person so described was not acting as an agent or nominee. Lord Haldane pointed out in the *Drughorn* case, *supra*, that the description of a party to a contract as owner or proprietor of certain property did imply that at the time of entering into the contract he was the owner or proprietor of the property, and evidence that he was the agent of the owner or proprietor and not the owner or proprietor himself therefore contradicted the written contract. It was, as Lord Haldane said, not a question of agency, but a question of property, and, as Lord Sumner pointed out at p. 210 of [1919] A.C., not a question of property after the contract had been entered into, but prior to the time it was entered into. The description "lessor" did, his lordship thought, imply an antecedent interest in the property, but the description "lessee" or "tenant" did not. In his lordship's opinion, the description "tenant" no more negatived agency than would the description "contracting party." His lordship gave judgment for the plaintiff for the amount claimed.

COUNSEL: *P. B. Morle; T. F. Davis.*

SOLICITORS: *Soames, Edwards & Jones; Freeman & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1944, No. 722/L.31.

COUNTY COURT, ENGLAND—COURTS AND DISTRICTS.

THE COUNTY COURT DISTRICTS (TORRINGTON) ORDER, 1944. DATED 19TH JUNE, 1944.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the County Courts Act, 1934,* and all other powers enabling me in this behalf, do hereby order as follows:—

1.—(1) The holding of the Torrington County Court shall be discontinued and the district of that Court shall be consolidated with the district of the Bideford County Court.

(2) The Bideford County Court shall have jurisdiction as respects proceedings commenced in the Torrington County Court before this Order comes into operation.

2. This Order may be cited as the County Court Districts (Torrington) Order, 1944, and shall come into operation on the 24th day of June, 1944, and the County Court Districts Order, 1938† shall have effect as amended by this Order.

Dated this 19th day of June, 1944. *Simon, C.*

* 24 & 25 Geo. 5, c. 53. † S.R. & O. 1938 (No. 470) I, p. 706.

Societies.

THE LAW SOCIETY: ANNUAL MEETING.

The Law Society's Annual Meeting, held at The Law Society's Hall, Chancery Lane, on Friday, 7th July, was, in the words of Sir Ernest Bird (the president), the "shortest on record." He explained that, in view of the undesirability in times like these of long speeches and long meetings, and in view of the fact that the meeting was being held under a glass roof, he had thought of suggesting that his speech moving the adoption of the annual report be taken as read on the understanding that it was printed and published later. The meeting agreed. Mr. A. C. Morgan (chairman of the Finance Committee), of Messrs. Park Nelson & Co., solicitors, 11 Essex Street, Strand, was elected president, and Mr. H. M. Foster, of Messrs. Foster, Wells & Coggins, solicitors, Aldershot, vice-president for the next year.

Parliamentary News.

HOUSE OF LORDS.

Finance Bill [H.C.].
Read Third Time. [11th July.
Food and Drugs (Milk and Dairies) Bill [H.C.].
Read First Time. [11th July.
India (Misc. Provisions) Bill [H.C.].
Read Third Time. [11th July.
Law Officers Bill [H.C.].
In Committee. [11th July.
Middlesex County Council [H.C.].
Read Second Time. [5th July.
Min. of Health Prov. Order (North Lindsey Water Board) Bill [H.L.].
Min. of Health Prov. Order (Warrington) Bill [H.L.].
Min. of Health Prov. Order Confirmation (Workington) Bill [H.L.].
North West Midlands Joint Electricity Authority Prov. Order Bill [H.L.].
Read Third Time. [11th July
Parliamentary Electors (War-time Registration) Bill [H.C.].
Read Third Time. [11th July.
Rural Water Supplies and Sewerage Bill [H.C.].
Read Second Time. [4th July.
Validation of War-time Leases Bill [H.L.].
Read Second Time. [11th July.

HOUSE OF COMMONS.

Ascot District Gas and Electricity Bill [H.L.].
Derwent Valley Water Bill [H.L.].
Read Second Time. [4th July.
Herring Industry Bill [H.C.].
Read Second Time. [5th July.
Housing (Scotland) Bill [H.C.].
Read First Time. [6th July.
Housing (Temporary Provisions) Bill [H.C.].
Read First Time. [5th July.

QUESTIONS TO MINISTERS.

LAND VALUATIONS FOR ESTATE DUTY.

Mr. DENMAN asked the Chancellor of the Exchequer whether valuations of land for death duties since March, 1939, have been based on values at that date; and what deductions have been made to eliminate floating value, shown by the Uthwatt Committee to be inappropriate to specific land.

Sir JOHN ANDERSON: The valuations of land for estate duty purposes have been based on the market value at the date of death, which is the basis prescribed by s. 7 (5) of the Finance Act, 1894. [6th July.

LEASEHOLD PROPERTIES DESTROYED BY ENEMY ACTION.

Mr. HYND asked the Minister of Town and Country Planning what is the position of leaseholders whose property has been destroyed by enemy action but who have retained their lease in the hope of rebuilding after the war in view of the Government's new proposals for compensating only the ground landlords where such land is refused licence for redevelopment; and whether he will consider making some apportionment of such compensation in these cases as between the ground landlord and the leaseholder who has continued to pay ground rent.

Mr. W. S. MORRISON: The Government proposals for the payment of compensation are not confined to owners of the fee simple, but apply also to owners of leasehold interests. [6th July.

MAGISTRATES' COURTS.

Mr. HYND asked the Secretary of State for the Home Department if he will emphasise the proper relationships and responsibilities of justices of the peace by ceasing to use the term police courts and referring to magistrates' courts in all future official communications as recommended by the Magistrates' Association.

Mr. HERBERT MORRISON: The use of the term "police courts" has been discontinued by my department for some time past, except when statutory references make it necessary, and I have already given instructions that the term "Magistrates' Courts" should be used in all official communications whenever possible. The Departmental Committee on Justices' Clerks also recommend that courts of summary jurisdiction should be so described and, in drawing the attention of Justices and Chief Constables to the recommendations of this committee, I am taking the opportunity of referring specifically to this recommendation.

Sir PERCY HARRIS: Does that apply to London police courts?

Mr. MORRISON: Yes, sir. [6th July.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 726. **Coal Distribution Order,** 1943, General Direction (Restriction of Supplies) No. 9. June 26.

E.P. 727. Coal Distribution Order, 1943, Special Direction (Scottish Region) (Restriction of Supplies) No. 1. June 26.

No. 722/L.31. **County Court, England.** The County Court Districts (Torrington) Order. June 19. (See p. 247 of this issue.)

E.P. 741–6 (as one publication). **Defence.** Orders in Council, June 29, amending the Defence (General) Regulations, 1939—741 (amending reg. 7, and revoking regs. 37 and 40A), 742 (amending regs. 31A, 32 and 33B), 743 (amending reg. 45AA and the Fourth Schedule), 744 (amending reg. 48C), 745 (amending reg. 56AB), 746 (amending reg. 76).

E.P. 737. **Nitrogenous Fertilisers** (Revocation) Order. June 26.

No. 724/L.32. **Supreme Court, England.** The Supreme Court Funds (No. 2) Rules. June 26. (See *ante*, p. 240.)

E.P. 732. **Women's Forces.** Air Council Instructions, June 16, 1944, made under s. 176A of the Air Force Act, amending the Air Council Instructions dated June 12, 1941, as amended by the Air Council Instructions dated Jan. 1, 1942, applying the Air Force Act to certain women.

DRAFT STATUTORY RULES AND ORDERS, 1944.

Town and Country Planning (General Interim Development) Order, 1944

BOARD OF TRADE.

Companies Act, 1929. Company Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence. 17th Day, April 28, 1944.

Notes and News.

Honours and Appointments.

The King has approved the appointment of Mr. HORACE HECTOR HEARNE, a puisne judge of the Supreme Court of Ceylon, to be the Chief Justice of Jamaica in succession to Sir Robert Howard Furness, who has retired. Mr. Hearne was called by Lincoln's Inn in 1925.

Notes.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held at 60, Carey Street, W.C.2, on the 5th July, 1944, grants amounting to £2,355 18s. were made to forty-four beneficiaries.

The quarterly meeting of the Lawyers' Prayer Union will be held on Monday, the 24th July, at 6 p.m., in the Council Room of The Law Society, preceded by half an hour for tea. The speaker on this occasion will be Dr. Basil F. C. Atkinson, Under-Librarian of Cambridge University, and his subject will be "Vengeance, Justice or Mercy?" (a study of the Imprecatory Psalms).

LEASES FOR DURATION OF WAR.

Under the Validation of War-time Leases Bill, which was introduced in the House of Lords on the 6th July, agreements creating a tenancy for the duration of the war will have effect as a tenancy for ten years from the date of the agreement. If the war ends before the ten years expire, the tenancy can be determined by at least one month's notice in England and forty days in Scotland.

Where the agreement does not indicate whether "the war" refers to a particular theatre of war or state, it will be construed as meaning all theatres of war.

The agreements affected by the Bill are those which purport to create a tenancy for a specified term or for the duration of the war, whichever is either the shorter or the longer; and those where notice is not to be given before the end of the war, or where a vendor is to be entitled to retain possession for the duration of the war.

The Bill does not revive any agreement terminated before its passing, or apply where notice has been given before 13th June.

Court Papers.

TRINITY SITTINGS, 1944.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice MORTON.
Monday July 17	Mr. Reader	Mr. Andrews	Mr. Jones
Tuesday ,, 18	Hay	Jones	Reader
Wednesday ,, 19	Farr	Reader	Hay
Thursday ,, 20	Blaker	Hay	Farr
Friday ,, 21	Andrews	Farr	Blaker
Saturday ,, 22	Jones	Blaker	Andrews

GROUP A.

DATE.	Mr. Justice COHEN. *Non-Witness.*	Mr. Justice VAISEY. *Witness.*	Mr. Justice UTHWATT. *Non-Witness.*	Mr. Justice EVERSHED. *Witness.*
Monday July 17	Mr. Blaker	Mr. Farr	Mr. Hay	Mr. Reader
Tuesday ,, 18	Andrews	Blaker	Farr	Hay
Wednesday ,, 19	Jones	Andrews	Blaker	Farr
Thursday ,, 20	Reader	Jones	Andrews	Blaker
Friday ,, 21	Hay	Reader	Jones	Andrews
Saturday ,, 22	Farr	Hay	Reader	Jones